

ORIGINAL



0000043701

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

JEFF HATCH-MILLER - CHAIRMAN  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

2006 FEB 24 P 2:03

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE FORMAL  
COMPLAINT OF ACCIPITER  
COMMUNICATIONS, INC. AGAINST  
VISTANCIA COMMUNICATIONS, L.L.C.,  
SHEA SUNBELT PLEASANT POINT, L.L.C.,  
AND COX ARIZONA TELCOM, LLC.

DOCKET NO. T-03471A-05-0064


**NOTICE OF FILING**

Pursuant to the February 6, 2006 Procedural Order in this docket, Cox Arizona Telcom, LLC, through undersigned counsel, submits unredacted pages of the Settlement Agreement concerning the payment terms. The entire Settlement Agreement, other than the redacted payment terms, was previously filed on December 14, 2005.

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of February 2006.

COX ARIZONA TELCOM, LLC

By

  
Michael W. Patten  
ROSHKA DEWULF & PATTEN  
One Arizona Center  
400 East Van Buren Street, Suite 800  
Phoenix, Arizona 85004

Attorneys for Cox Arizona Telcom, LLC

ROSHKA DEWULF & PATTEN, PLC  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET - SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

1 Original and 13 copies of the foregoing  
2 filed this 24<sup>th</sup> day of February 2006 with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered/mailed  
8 this 24<sup>th</sup> day of February 2006 to:

9 Chairman Jeff Hatch-Miller  
10 Arizona Corporation Commission  
11 1200 West Washington Street  
12 Phoenix, Arizona 85007

13 Commissioner Marc Spitzer  
14 Arizona Corporation Commission  
15 1200 West Washington Street  
16 Phoenix, Arizona 85007

17 Commissioner William A. Mundell  
18 Arizona Corporation Commission  
19 1200 West Washington Street  
20 Phoenix, Arizona 85007

21 Commissioner Mike Gleason  
22 Arizona Corporation Commission  
23 1200 West Washington Street  
24 Phoenix, Arizona 85007

25 Commissioner Kristin K. Mayes  
26 Arizona Corporation Commission  
27 1200 West Washington Street  
Phoenix, Arizona 85007

Dwight Nodes, Esq.  
Administrative Law Judge  
Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Christopher C. Kempley, Esq.  
Chief Counsel, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

1 Ernest G. Johnson  
2 Director, Utilities Division  
3 Arizona Corporation Commission  
4 1200 West Washington Street  
5 Phoenix, Arizona 85007

6 Martin A. Aronson  
7 William D. Cleaveland  
8 Morrill & Aronson, P.L.C.  
9 One East Camelback Road, Suite 340  
10 Phoenix, Arizona 85012

11 Charles V. Gowder, President  
12 Accipiter Communications, Inc.  
13 2238 Loan Cactus Drive, Suite 100  
14 Phoenix, Arizona 85027

15 Michael M. Grant, Esq  
16 Gallagher & Kennedy  
17 2575 East Camelback Road  
18 Phoenix, Arizona 85016

19 By Mary Ippolito  
20  
21  
22  
23  
24  
25  
26  
27

conditions and restrictions recorded in relationship to the Vistancia Development.

**5. Payment to Accipiter**

Cox and Developer shall jointly and severally pay in good funds to Accipiter the amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000). This payment shall be made through an escrow as follows: Within three business days of the execution of this Agreement, Cox and Developer shall pay the \$1,000,000 into an interest bearing escrow account No. 25-4963 established with Arizona Escrow & Financial Corporation. Accipiter shall be responsible for all normal and customary escrow fees and costs. The full \$1,000,000 with interest shall be released to Accipiter from the escrow immediately upon the occurrence of the following:

(i) Execution of this Agreement, including its release provisions in paragraph 6 below;

(ii) the filing of two Notices of Dismissal in the Superior Court Action substantially in the forms attached as Exhibits 9 and 10. The Notice of Dismissal of the Parties to this Agreement and their Affiliates shall be "with prejudice." The Notice of Dismissal of all other parties named in the Superior Court Action shall be "without prejudice"; and

(iii) either (a) the filing by Accipiter of a Notice of Withdrawal with Prejudice from the ACC Action including an explanatory statement in the Notice that Accipiter has fully released with prejudice all claims set forth against Respondents in that docket substantially in the form attached as Exhibit 11, or (b) the withdrawal, dismissal or other resolution with prejudice of the ACC Action.

**6. Mutual Release**

Accipiter, Cox and Vistancia mutually agree, and subject to the conditions set forth in this paragraph, do hereby fully, finally, and forever release and discharge each other and any and all affiliated corporations, partnerships, other business entities, including present and former officers, directors, employees, partners, shareholders, attorneys, agents and any other affiliated Parties or entities from and against any and all manner of action or actions, cause or causes of action, liabilities, suits, debts, accounts, books, covenants, contracts, controversies, torts, promises, judgments, claims and demands whatsoever in law or in equity which they may have had, now have or which they may have as of the Effective Date of this Agreement, including but not limited to the claims any of the Parties did allege or could have alleged in either the ACC Action or the Superior Court Action. Said mutual release is intended to cover, and does cover, any and all demands, claims, causes of actions and suits in law or in equity which the Parties have or may have for damages, losses or expenses